

REPORTS ANALYSIS DIVISION REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: August 28, 2018

ANALYST: Maureen Benitz

I. COMMITTEE:

American Delta Party
C00620377
Suzan Korth, Treasurer
5440 Morehouse Drive, Suite 5000
San Diego, CA 92121

II. RELEVANT STATUTE:

52 U.S.C. § 30104 (b)(2)
52 U.S.C. § 30116(a) and (f)
52 U.S.C. § 30118(a)
11 CFR § 103.3
11 CFR § 104.3(a)
11 CFR § 110.1(d)
11 CFR § 110.1(g)

III. BACKGROUND:

Excessive, Prohibited and Other Impermissible Contributions or Transfers

American Delta Party ("the Committee") received an apparent excessive contribution totaling \$25,000 from one (1) individual and received an apparent prohibited contribution totaling \$7,000 from one (1) limited liability corporation, disclosed on the 2016 August Monthly Report (Attachment 2).

On August 16, 2016, the Committee filed a 2016 August Monthly Report covering the period from July 1, 2016 through July 31, 2016. The report disclosed \$30,000 in receipts from one (1) individual on Schedule A supporting Line 13 (Loans Received), and \$7,000 in receipts from one (1) limited liability corporation on Schedule A supporting Line 15 (Offsets to Operating Expenditures) of the Detailed Summary Page (Images 201608169022453966-67).

On December 27, 2016, a Request for Additional Information (RFAI) was sent to the Committee referencing the 2016 August Monthly Report. The RFAI requested clarification regarding the receipt of apparently excessive contributions, as well as the receipt of apparently prohibited contributions. A chart was included with the RFAI identifying the apparently excessive contribution received from one (1) individual and identifying the apparently prohibited contribution received from one (1) limited liability corporation (Image 201612270300070635).

On February 8, 2017, Amanda Thawley, a representative of the Committee, called the RAD Analyst regarding the RFAI the Committee received referencing the 2016 August Monthly Report. Ms. Thawley said the prohibited receipt from a corporation was actually an in-kind contribution and was not sure how the Committee would disclose a refund. The Analyst advised Ms. Thawley that the Committee would have to pay the company for the value of the good or service they received. The Analyst also informed Ms. Thawley that the Committee had not responded to the RFAI referencing the Committee's Statement of Organization, received June 28, 2016. The Analyst told Ms. Thawley that the Committee tried to register as a national party committee, but the Committee has to petition the FEC in the form of an Advisory Opinion in order to be recognized as a party committee. The Analyst directed Ms. Thawley to the FEC's website where she could view the RFAI. The Analyst told Ms. Thawley that until the Committee is recognized as a national party committee, the Committee is still technically in receipt of an excessive contribution from an individual, which was also addressed in the RFAI referencing the 2016 August Monthly Report (Attachment 3).

Subsequently on February 8, 2017, Elia Mora, a Committee staff member, called the Analyst with questions about the RFAs referencing the Committee's Amended Statement of Organization, received June 28, 2016 and the 2016 August Monthly Report. Ms. Mora pointed out that the Committee's mailing address was incorrect and that the Committee only recently received the RFAs due to the incorrect address. The Analyst told Ms. Mora that if the Committee needed to update any information, it should amend the Statement of Organization. The Analyst told Ms. Mora that for the issues in the RFAI referencing the 2016 August Monthly Report, the Committee must refund the excessive amount back to the contributor. In addition, for the prohibited in-kind contribution the Committee received, the Committee must pay the company for the service provided. The Analyst also told Ms. Mora that the Committee needs to respond to the issue about their committee type on the Statement of Organization. The Analyst told Ms. Mora the Committee must petition the FEC to be recognized as a national party committee before it spends or receives money against the higher limits provided for national party committees. The Analyst told Ms. Mora more information about the petition process can be found in the letter and on the FEC's website (Attachment 3).

On February 15, 2017, Ms. Mora called the Analyst and requested clarification on how to respond to the RFAI referencing the 2016 August Monthly Report, specifically the issue regarding the excessive contribution the Committee received. Ms. Mora said the Committee would be refunding the excessive amount and wanted to know how to report that. The Analyst told Ms. Mora that the Committee would have to disclose the refund on the report covering the date the refund was made. The Analyst also told Ms. Mora that a copy of the refund check would have to be sent to the FEC as well and the Analyst provided

Ms. Mora with the FEC's mailing address. Ms. Mora then requested help with petitioning the FEC on becoming a national party committee. The Analyst told Ms. Mora that this matter would be better handled by the Information Division. Ms. Mora said the Committee had already spoken to the Information Division several times and received examples of past Advisory Opinions, but wanted guidance or a template on how to petition the FEC. The Analyst again suggested she speak with the Information Division regarding this matter (Attachment 3).

On February 16, 2017, Ms. Mora called the Analyst. Ms. Mora said the prohibited receipt was actually an in-kind contribution/service to the Committee, so the Committee could not actually disburse a refund. The Analyst told Ms. Mora that the Committee could not accept an in-kind from a prohibited source and that the Committee would have to make a payment for the full amount of the service provided. The Analyst advised Ms. Mora that if the Committee did not have sufficient funds to make the payment at this time, the Committee would have to disclose a debt owed to the company for the amount of the service they provided. Ms. Mora also had a question about the excessive loan the Committee received. Ms. Mora wanted to know how the Committee should pay the excessive amount back. The Analyst told Ms. Mora that if the Committee does not have sufficient funds to pay back this individual, then a debt must be disclosed as owed to this individual (Attachment 3).

On February 17, 2017, Lucas Mundell, counsel to the Committee, called the Analyst. Mr. Mundell said there were difficulties with the Committee receiving the RFAI referencing the Amended Statement of Organization timely because the Committee's mailing address was incorrect. The Analyst told Mr. Mundell that the RFAI was sent via email to the email address on record as well. Mr. Mundell then requested an extension to which the Analyst replied that an extension for a response to the RFAI could not be granted. Mr. Mundell then asked for guidance on petitioning the FEC to be recognized/registered as a national party committee. The Analyst advised the Committee to speak with the Information Division, which is better suited to provide examples of past Advisory Opinions committees have submitted to be considered before the Commission. The Analyst also suggested the Committee may want to speak with the Office of General Counsel if they had legal questions and provided the contact number for both divisions. Mr. Mundell then wanted to know what the ramifications would be if the Committee were to not be approved as a national party, what penalties there may be if the Committee did not refund the apparent excessive contribution from an individual, and also how to pay back the apparent excessive contribution received. The Analyst told Mr. Mundell that outcomes of hypothetical scenarios could not be discussed. The Analyst suggested that the Committee would have to raise funds in order to pay back the apparent excessive amount if it did not currently have sufficient funds to do so (Attachment 3).

On November 1, 2017, the Analyst called Mr. Mundell to inform him that the outstanding issues regarding apparent excessive receipts as well as apparent prohibited receipts disclosed on the Committee's 2016 August Monthly Report may be referred for further action to another office within the Commission. The Analyst explained that this call was to notify the Committee of possible further enforcement action and to provide them with the opportunity to disclose any additional information regarding the matter, if they wanted to do so. Mr. Mundell requested some clarification regarding the issues being

referred for additional action. The Analyst informed Mr. Mundell that the Committee tried to register as a national party committee. However, since the Committee has not been formally recognized as a national party committee by the FEC, they could not receive contributions against the higher limits reserved for national party committees. Therefore, some receipts disclosed on the 2016 August Monthly Report appeared to be excessive. As for the apparent prohibited receipt, the Analyst informed Mr. Mundell that the Committee disclosed a receipt from a limited liability corporation, which was a prohibited source. Mr. Mundell said he would discuss this with the Committee and respond to the issue as soon as possible (Attachment 3).

On November 6, 2017, Ms. Mora called the Analyst to discuss the issues referable for additional action from the Committee's 2016 August Monthly Report. She requested some clarification regarding the matters at hand. The Analyst informed her that because the Committee is currently not a national party committee, they cannot receive contributions against the higher limits reserved for national party committees. The Analyst told her that the contribution in question is excessive by \$25,000 and that the Committee would have to refund that amount to the individual donor. The Analyst continued that the Committee also received an in-kind contribution from a prohibited source and that the Committee would have to pay this company for the value of the in-kind they received. Ms. Mora said that the Committee does not currently have sufficient funds to make these disbursements. The Analyst told Ms. Mora that if the Committee intends to pay back the excessive contribution and pay for the prohibited contribution, it appears the Committee would have to raise funds in order to do so. Ms. Mora said she would contact her legal counsel to determine how to proceed (Attachment 3).

On November 20, 2017, Ms. Mora called to follow-up on the Committee's outstanding matters referable for additional action. Ms. Mora stated she had done some research and that the activity in question was permissible in her state. The Analyst told her that because the Committee is registered as a federal committee, the activity is prohibited at the federal level. She said she would reach out to her accountant and have that individual contact the Analyst (Attachment 3).

Subsequently on November 20, 2017, Ms. Thawley called to request clarifying information regarding the Committee's outstanding matters referable for additional action. The Analyst informed Ms. Thawley that the Committee had received an excessive contribution from an individual and also received an in-kind contribution from a prohibited source. Ms. Thawley wanted to know what the Committee could do to rectify the issue. The Analyst explained to her that the Committee can provide additional information regarding the matter on the public record. Ms. Thawley wanted to know what exactly the Committee should say and if they should provide additional information. The Analyst told Ms. Thawley that the Committee may want to seek legal advice regarding whether or not they want to disclose any additional information (Attachment 3).

To date, no further communications have been received from the Committee regarding this matter.

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O-Index (2015-2016)															
Cmte. ID: C00620377 Cmte. Name: AMERICAN DELTA PARTY															
Treasurer Name: KORTH, SUZAN Address: 5400 MOREHOUSE DRIVE, SUITE 5000, SAN DIEGO, CA 92121															
Cmte. Type: X (NON-QUALIFIED PARTY) Cmte. Designation: U (UNAUTHORIZED) Filing Frequency: MONTHLY FILER															
Form Jp	Rpt Tp	A/I	Recpt Dt	Pgs	Begin Lmg#	Beg Cvg Dt	End Cvg Dt	Ltr Mail Dt	Begin Cash	Recpts	Disb	End Cash	Depts	Loans	Debits & Loans
MS-T			9/16/2016	1	201609169030838632				-	-	-	-	-	-	-
								7/25/2016							
RQ1		A	7/25/2016	2	201607250300052945			12/27/2016	-	-	-	-	-	-	-
RQ2	M8	N	12/27/2016	4	201612270300070635	7/1/2016	7/31/2016		-	-	-	-	-	-	-
F3XN	M7	N	7/18/2016	5	201607189020680339	6/1/2016	6/30/2016		\$0	\$200	\$0	\$200			\$0
F3XN	M8	N	8/16/2016	9	201608169022453961	7/1/2016	7/31/2016		\$200	\$37,000	\$35,060	\$2,140	-	\$30,000	\$30,000
F3XN	M9	N	9/16/2016	6	201609169030838613	8/1/2016	8/31/2016		\$2,140	\$0	\$0	\$2,140	-	\$30,000	\$30,000
F3XN	M10	N	10/12/2016	9	201610129032296660	9/1/2016	9/30/2016		\$2,140	\$781	\$807	\$2,114	-	\$30,781	\$30,781
F3XN	12G	N	10/26/2016	7	201610269034596582	10/1/2016	10/19/2016		\$2,114	\$0	\$26	\$2,088	-	\$30,781	\$30,781
F3XN	30G	N	12/5/2016	7	201612059037617616	10/20/2016	11/28/2016		\$2,088	\$0	\$26	\$2,062	-	\$30,781	\$30,781
F3XN	YE	N	1/1/2017	10	201701119041370592	11/29/2016	12/31/2016		\$2,062	\$500	\$526	\$2,036	-	\$31,281	\$31,281
F1A		A	6/23/2016	4	201606239020102004				-	-	-	-	-	-	-
F1A		A	6/23/2016	4	201606239020093902				-	-	-	-	-	-	-
E1A		N	6/21/2016	4	201606219020089528				-	-	-	-	-	-	-

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Page 2 of 2
Attachment 1

America Delta Party (C00620377)**Excessive and Prohibited Contributions Not Refunded, Listed by Contributor**

Name	Date	Contribution Amount	Report	Excessive/Prohibited Amount Not Refunded within Timeframe
De La Fuente, Roque	7/31/2016	\$30,000.00	2016 August Monthly	\$25,000.00
Direct Contact Voter Solutions, LLC	7/11/2016	\$7,000.00	2016 August Monthly	\$7,000.00
Total Excessive/Prohibited Amount Not Refunded Within Timeframe:				\$32,000.00